

**Editor's note: appealed - 43 U.S.C. 1744(c), declared unconstitutional, Civ.No. 80-114 (D. Mont. June 28, 1982) 575 F.Supp. 4; but see Madison Locke 471 US 84**

M. E. ROGERS

IBLA 80-203

Decided May 7, 1980

Appeal from decision of the Montana State Office, Bureau of Land Management, holding lode mining claims abandoned and void. 3833 (952).

Affirmed.

1. Notice: Generally -- Regulations: Generally

All persons dealing with the Government are presumed to have knowledge of duly promulgated regulations.

2. Federal Land Policy and Management Act of 1976: Generally -- Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment -- Mining Claims: Recordation

Under sec. 314 of the Federal Land Policy and Management Act of Oct. 21, 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1-2, the owner of a mining claim located before Oct. 21, 1976, must file a copy of the official record of the notice or certificate of location with the proper Bureau of Land Management Office on or before Oct. 22, 1979. These requirements are mandatory and failure to comply is deemed conclusively to constitute an abandonment of the claim by the owner and renders the claim void.

APPEARANCES: M. E. Rogers, pro se.

## OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

M. E. Rogers appeals the November 19, 1979, decision of the Montana State Office, Bureau of Land Management (BLM), declaring 10 lode mining claims abandoned and void for failure to timely file such instruments as are required by 43 CFR 3833.1 and 3833.2 within the time prescribed. 1/

On October 21, 1950, one Herbert W. Carver located the Ross, Stable Vain, and Carleton lode mining claims, and recorded certificates of location for each in Broadwater County, Montana, on November 20, 1950. There is no clear evidence in the record before us to show transfer of title to these claims from Carver to appellant. Melville E. Rogers, appellant herein, located the St. Francis Xavier lode mining claim October 10, 1964, and recorded it in Broadwater County on December 17, 1964. Rogers also located the R-1, R-2, R-3, R-4, R-5, and R-6 lode mining claims on September 26, 1967, and recorded them in Broadwater County on October 31, 1967.

On September 24, 1979, Rogers filed with BLM copies of two maps showing the location of each of the 10 claims above cited. These maps contained statements that all assessment work required for 1979 had been done and notice thereof recorded for the 10 claims. A check for \$50 to cover the service fees for recordation was included.

BLM, by letter dated October 16, 1979, notified appellant that he had not transmitted a copy of the official record of the notice of location for each claim. He also was advised that he was required to submit evidence of the annual assessment work done on the claims during 1979 on or before October 22, 1979. The correct instruments for

---

1/ These regulations state in pertinent part:

"[§] 3833.1-2 Manner of recordation -- Federal lands.

"(a) The owner of an unpatented mining claim \* \* \* located on or before October 21, 1976, on Federal lands \* \* \* shall file (file shall mean being received and date stamped by the proper BLM Office) on or before October 22, 1979, in the proper BLM Office, a copy of the official record of the notice or certificate of location of the claim \* \* \* filed under state law."

"§ 3833.2-1 When filing required.

"(a) The owner of an unpatented mining claim located on Federal lands on or before October 21, 1976, shall file in the proper BLM office on or before October 22, 1979, or on or before December 30 of each calendar year following the calendar year of such recording, whichever date is sooner, evidence of annual assessment work performed during the preceding assessment year or a notice of intention to hold the mining claim."

all 10 claims were received by BLM on November 2, 1979. On November 19, 1979, BLM issued the decision from which this appeal arises.

Appellant states that on September 24, 1979, BLM received maps of the claims and statements that the 1979 assessment work had been performed and notice thereof recorded, together with \$50 in service fees, but not until October 26 did he receive information from BLM that his submittal was inadequate. Thereafter he requested the county recorder of Broadwater County to forward to BLM copies of the proper documents. BLM received these documents on November 2 and returned them with its decision of November 19. Appellant states he thought he was complying with the intent and purpose of the regulations when he advised BLM that the claims had been properly located and recorded, the annual assessment work accomplished, and that it was his desire to keep the claims. He states his failure to file the proper documents timely was occasioned by his absence from Montana and by the fact that his mail is forwarded to him from Montana only once a month. As a result he did not receive BLM's notice of the deficiencies in his original submittal until October 26, 1979.

[1] All persons dealing with the Government are presumed to have knowledge of relevant statutes and duly promulgated regulations. 44 U.S.C. §§ 1507, 1510 (1976); Federal Crop Insurance Corp. v. Merrill, 332 U.S. 380 (1947); Willene Minnier, 45 IBLA 1 (1980); Donald H. Little, 37 IBLA 1 (1978). It thus was incumbent upon appellant to comply with the pertinent regulations and he may not pass the onus for his failure to BLM.

[2] The owner of an unpatented mining claim located prior to October 21, 1976, had until October 22, 1979, to record the location with BLM and to provide certain ancillary information. Section 314(b), Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744(b) (1976). The pertinent regulations are 43 CFR 3833.1-2 and 43 CFR 3833.2-1. Recordation is effected only by filing a copy of the official record of the notice or certificate of location filed under State law with the proper BLM office. 43 CFR 3833.1-2(a). Failure to comply with the regulations governing recordation of information relating to unpatented mining claims must result in a conclusive finding that the claim has been abandoned and that it is void. Section 314(c), FLPMA, 43 U.S.C. § 1744(c) (1976). Willene Minnier, *supra*; Joe B. Cashman, 43 IBLA 239 (1979); Walter T. Paul, 43 IBLA 119 (1979).

This decision is without prejudice to the right of appellant to relocate the claims, subject to intervening rights and if the lands continue to be open to mining locations.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Douglas E. Henriques  
Administrative Judge

We concur:

Frederick Fishman  
Administrative Judge

Joan B. Thompson  
Administrative Judge

